IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

FRIDAY, THE FOURTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

and
THE HON'BLE SRI JUSTICE M.NARAYANA REDDY

WRIT APPEAL No. 55 of 2005

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 22/12/2004 in WP No. 20717 OF 2004 on the file of the High Court.)

Between:

Mohd. Soheb Hasan, S/o. Syed Sydul Hasan,Student, B.E.III Year, Mukhafum Jah College of Engineering and Technology, Road No. 3, Banjara Hills, Hyderabad.

..... APPELLANT

AND

1. The Osmania University, rep by its Registrar, Hyderabad.
2. The Controller of Examinations, Examination Branch, Osmania University, Hyderabad.
3. The Principal, Mukhafum Jah College of Engineering and Technology, Road No. 3, Banjara Hills, Hyderabad.

.....RESPONDENTS

Counsel for the Appellant: Mr. V.VENKATARAMANA

Counsel for Respondents 1 & 2: Mr. DEEPAK BHATTACHARJEE

Counsel for Respondent No.3: Mr.C.V.Mohan Reddy.

The Court made the following :

ORAL JUDGMENT:

(per Honourable Sri Devinder Gupta, the Chief Justice)

The petitioner-appellant joined the Bachelor of Engineering (Four Years Course in Electronics and Communications) in the third respondent college in the academic year 2001-2002. In the examinations scheduled to be held in November and December 2003, the petitioner had appeared for the first semester of second year and first semester of third year. On 07.11.2003, he wrote the examination, but, on 18.11.2003, his hall-ticket was taken back and show-cause notice was issued on 24.12.2003 alleging that he had indulged in malpractice and calling upon him to show cause why action should not be taken against him. Punishment was imposed on 19.1.2004 debarring him for one year and cancelling the result of all examinations in which he appeared. Challenging this order, Writ Petition No. 1475 of 2004 was filed, which was allowed by this Court on 23.2.2004. The petitioner was directed to submit representation and the matter was directed to be decided afresh. Again on 12.3.2004, punishment was reiterated, which lead to filing of Writ Petition No.5095 of 2004. It was allowed on 29.9.2004 with certain directions to the respondent-University, which are as follows:

> " Accordingly, for the above reasons, the impugned order is set aside and the matter is remitted to second respondent for passing appropriate orders based on the material. The court also observes that the petitioner has already suffered for about a year and though he has completed the B.E. course by reason of the orders of this Court, he could not appear in the examinations. The second respondent may also keep this in mind because Ordinance No. VII vests the discretion in the authority and the same also impliedly gives power to take a lenient view even if the malpractice is proved and circumstances so warrant. The fact that the petitioner suffered for one year is a strong circumstance which must influence the decision making by second respondent while imposing punishment. Therefore, the matter is remitted to second respondent who is directed to pass appropriate orders within a period of one week from the date of receipt of a copy of this order.

Against the order disposing the Writ Petition, Writ Appeal No.1590 of 2004 was filed. In the meanwhile, the University passed an order on 12.10.2004, which was also brought to the notice of the Court. The University without deciding in respect of the malpractice alleged against the petitioner, stated that as a special case, subject to his eligibility and fulfilling the attendance and other requirements as per the rules of

the University, the University had decided to permit the petitioner to appear for the B.E.Examinations scheduled in the month of Novermber/December, 2004, and, further promotion to fourth semester shall be subject to University Rules. Taking note of this also, Writ Appeal was disposed of on 26.10.2004 noticing that the petitioner-appellant has been permitted to appear for the second year first semester examinations and as regards third year first semester, the University was directed to announce the result of the papers in which he appeared in November/December, 2003.

Since the order passed on 12.10.2004 was not under challenge before us, fresh Writ Petition No. 20717 of 2004 was filed, which has been disposed of by the learned Single Judge with certain directions. The appeal is against the said order.

The position, as of today, is that petitioner had appeared on 7.11.2003 for the first semester of second year examinations, but result has not so far been declared. In the first semester of third year, petitioner has cleared three papers and has to appear for the remaining papers. For the second semester of third year and the first semester of fourth year, petitioner has neither appeared in examinations, nor has been permitted to do so. Learned counsel for the appellant submits that petitioner-appellant be permitted to appear for the above examinations, since the University is now invoking the Rule of attendance as well as backlog rule, and, the petitioner is deprived of his chances to appear, and, moreover, a decision was taken on 12.10.2004, which must be presumed that the petitioner was exonerated of the charge.

We deem it proper that in view of the decision of the university dated: 12.10.2004, they would permit the petitioner to write papers of the second semester of second year and the first semester of third year, since, there was no dispute as regards the attendance of the petitioner for the said two semesters, and, since the petitioner is fighting in court in the matter and by virtue of interim order of this court, he attended certain lectures for the second semester of third year, that subject to rule of attendance, he may also be permitted to write examinations for the second semester of third year. But, the learned counsel for the appellant submits that the Rule of attendance should not be applied to the petitioner, since there was no fault on his part, and, he had suffered at the hands of the respondent, who had exonerated.

On consideration of the submissions made at the Bar, we are of the view that the

University has not so far taken any decision as was directed by the judgment delivered on 29.9.2004 in Writ Petition No. 5095 of 2004. There was specific direction to the University in the order dated: 29.9.2004 to take a decision as regards the allegation against the petitioner of his being involved in malpractice. The University was then directed to keep in mind that Ordinance No.VII vests discretion in the authority empowering to take lenient view even if the malpractice is proved and circumstances so warrant. As the University has not taken any decision, we dispose of this Writ Appeal with direction to the second respondent to take appropriate decision as regards the charges against the petitioner of malpractice. Decision will be taken in accordance with the directions issued on 29.9.2004 in Writ Petition No. 5095 of 2004 not only on the petitioner's involvement, but also about the punishment imposed. Respondent No.2 shall also keep in mind the discretion vested in it as regards the permission to be granted to the petitioner to write down the examinations. Decision will be taken within a period of four weeks from today strictly in accordance with law, and will be communicated to the appellant herein.

The Writ Appeal stands disposed of accordingly. No costs.

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DEVINDER GUPTA, C.J.

4.2.2005.

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M.NARAYANA REDDY, J.

VR.

To

1. The Registrar, Osmania University, Hyderabad.
2. The Controller of Examinations, Examinations Branch, Osmania University, Hyderabad.
3. The Principal, Mukhafum Jah College of Engineering and Technology, Road No.

3, Banjara Hills, Hyderabad.

4. Two CD copies.